

REPORT - PLANNING COMMISSION MEETING
October 24, 2002
November 7, 2002

Project Name and Number: Saddle Rack Nightclub (PLN 2003-00038)

Applicant: Gary Robinson, Saddle Rack

Proposal: To consider a Conditional Use Permit for a nightclub for developed property located in the Industrial Planning Area.

Recommended Action: Approve, based on findings and subject to conditions

Location: 42011 & 42101 Boscell Road

Assessor Parcel Number: 531-220-10

Area: 3.55 acre site

Owner: Gary Robinson

Agent of Applicant: Rob Langan, Devcon Construction

Consultant(s): Devcon Construction; Rose Associates, Landscape Architects

Environmental Review: This project is categorically exempt from CEQA review under Section 15332, In-Fill Development Projects.

Existing General Plan: General Industrial; Commercial Industrial Overlay

Existing Zoning: G-I General Industrial District

Existing Land Use: Industrial uses

Public Hearing Notice: Public hearing notification is applicable. A total of twenty notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Boyce Road and Boscell Road. The notices to the owners were mailed on October 14, 2002. A Public Hearing Notice was delivered to The Argus on October 9, 2002 to be published by October 14, 2002.

Executive Summary: The proposed project is to operate a nightclub, the Saddle Rack, on developed property located at 42011 & 42101 Boscell Road in the Industrial Planning Area. The applicant proposes to provide a variety of entertainment options including country music concerts, live music, dancing, billiards, and mechanical bull riding. The applicant is requesting approval of a conditional use permit to operate a nightclub.

Background and Previous Actions: The project site is developed with an existing industrial building constructed in 1985. The Saddle Rack was a country and western nightclub in San Jose that operated for twenty-five years. The Saddle Rack was in a leased facility and closed in August 2001 due to sale of the property.

On October 22, 2002 City Council approved a zoning text amendment regarding nightclubs in the commercial/industrial overlay shown on the general plan land use map citywide. The zoning text amendment (PLN2002-00317) permits two nightclubs/dance clubs in the commercial/industrial overlay subject to a conditional use permit and other criteria: the use must be oriented to the regional market; convenient access from freeways is available; the proposed use would be compatible with existing industrial uses and would not impede future industrial development. The purpose of the

conditional use permit is to allow a proper integration into the community of uses that may only be suitable in specific locations in a zoning district, or only if such uses are designed in a particular manner on the site, or are subject to specific conditions.

Project Description: The project site is an industrial parcel with an existing 28,524 square foot building. The applicant proposes to operate the Saddle Rack in the front portion of the building. The project includes a small addition (437 square feet) for a band room near the entry. The Saddle Rack will provide a variety of entertainment options including country music concerts, live music, dancing, billiards, and a mechanical bull. The design includes two dance floors, three bar areas, and accessory store, coatroom, band, storage, and sound booth rooms. There is a radio booth for occasional broadcasts, possibly from station KRTY. The facility will also offer dance instruction. There will be limited food service; primarily snack items and some special events may be catered. There will be a cover charge to enter the Saddle Rack. The nightclub will operate with an On-sale General License for all alcoholic beverages and be limited to customers over 21 years of age. The proposed hours of operation are 6:00 pm until 2:00 am Wednesdays through Saturdays. The rear portion of the building will be used for Magnum Drywall, another business owned by the applicant. Magnum Drywall is closed during the Saddle Rack's hours of operation and the two businesses will share the parking. The applicant will provide additional parking on the site and on a portion of the adjoining lot.

Project Analysis:

General Plan Conformance: The site is designated General Industrial with Commercial Industrial Overlay. The proposed project is consistent with the existing General Plan land use designation because nightclubs are permissible uses; subject to conditional use permit approval. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

Fundamental Goal F-8	A diversity of residential, recreational, cultural, employment and shopping opportunities.
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Policy LU 3.3: Commercial uses providing necessary services for industrial uses and workers and large-scale regional retail and amusement uses may be allowed in industrially designated areas, with the exception of "Light Industrial". All commercial uses are subject to discretionary review to ensure the use can be served by the existing or planned roadway infrastructure and would not have a significant adverse impact on existing industrial uses in regards to parking requirements, traffic volume and other conflicts in operations. Appropriate non-industrial uses include large-scale regionally oriented retail and amusement uses as well as uses serving industry and employees, such as copying services, branch banks, eating and drinking establishments, convenience shopping and gas stations.

The proposed project is in conformance with the above goal and policy because the proposed use can be served by the existing or planned roadway infrastructure and would not have a significant adverse impact on existing industrial uses in regards to parking requirements, traffic volume and other conflicts in operations.

Zoning: The project site is zoned G-I General Industrial District. Section 8-21603.(j) of the Fremont Municipal Code allows a total of two nightclubs or dance clubs, subject to Conditional Use Permit. The proposed use is the first application for a nightclub or dance club use permit under the recently revised ordinance. The City of Fremont defines nightclub as follows:

Sec. 8-2167	"Nightclub" shall mean a drinking place which includes an area in which patrons may dance, or which provides live entertainment not including entertainment by a single musician."
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The proposed facility does meet the definition of nightclub but also provides some other amusement/entertainment devices such as a billiards room, mechanical bull, and dance instruction. The radio broadcasting is a permitted use in this zoning district.

Nightclubs, like any use involving large numbers of people, have the potential to create noise, traffic, and parking issues. Other cities have found nightclubs a compatible use in industrial areas. Industrial areas tend to have less traffic congestion at night. There are fewer neighbors that might be disturbed by sound from the facility. Noise at closing from people leaving the site is sometimes a problem in commercial areas near residences. The proposed site is distant from residential uses. The Conditional Use Permit will allow for appropriate conditions to ensure the use does not become a nuisance. Staff has included in the conditions of approval several conditions regarding operations, noise and security that are standard for similar uses.

Parking: The applicant proposes some of the spaces in the facility are support areas subject to different parking requirements than the 1 space per 30 square feet for drinking places and nightclubs. Staff agrees with most of the calculations proposed by the applicant but not all. Staff reviewed the variety of uses in the proposed facility for parking requirements and determined a total of 370 parking spaces are required. The billiards area has a requirement of two spaces per table. The other support areas were calculated at 1 space per 300 square feet, the standard for commercial and industrial development. Staff determined the parking requirements as follows:

Nightclub space/10,505 sq. ft./30	=	350 spaces
Support areas/3515 sq. ft./300	=	12 spaces
Billiards area/4 tables X 2	=	<u>8 spaces</u>
		370 spaces

The project site has a developed parking lot that will be enlarged and improved to current parking lot standards. The proposed parking also includes a portion of the adjoining property. The applicant has proposed a parking lot design with 323 parking spaces. The applicant originally proposed to lease part of the adjoining site and now is in the process of purchasing the 42101 Boscell Road parcel. During review of the proposed use, staff reviewed several designs of the proposed parking lot. The applicant needs the parking lot design to function for both the Saddle Rack and the drywall business. In addition to a loading area, a fenced storage area may be needed but the final design has not been developed. The applicant wishes to move forward with the use permit review but the parking lot design may be modified subject to Development Organization review for conformance with City ordinances. Eventually, the applicant will develop the adjoining lot with a new industrial building and associated parking. The applicant requests approval to develop the shortfall of 47 parking spaces in the next phase of site improvements. Eventually the two parcels would provide parking in excess of the City's requirements for the Saddle Rack. The conditions of approval address providing the additional parking in another phase of improvements or within 18 months of approval of the use permit. The applicant may not use unimproved areas of site for parking.

Architecture: The existing building is a contemporary style with a standing seam metal roof. The applicant proposes few modifications to the exterior. A proposed addition (band room) near the entry will be finished to match the building. An area near the front will be fenced to provide a patio area. New storefront doors and windows are proposed at the entry to match existing doors and windows. Several roll-up doors will be removed and the wall finished to match the building. The applicant may in the future propose an exterior remodel to the Saddle Rack portion of the building. The remodel will require an amendment to the Conditional Use Permit.

Landscaping: The proposed landscape design preserves most of the existing trees on site and provides improvements in conformance with landscape requirements for parking lots. The landscape palette includes White Ash, Purple Leaf Plum, and Aristocrat Pear trees. There are three Deodar Cedar trees at the front of the building that may be impacted by the sidewalk design. Should the trees be removed, the replacement trees will be 24" box Canary Island Pine.

Circulation/Access Analysis: Access to the project site is from Boscell Road, an existing minor industrial street. Two existing driveways on the project site and one existing driveway on the neighboring property to the south will provide for vehicular ingress and egress. New sidewalk along the Boscell Road frontage will provide pedestrian access. The developer shall install a sidewalk connection between the existing on site sidewalk and the new public sidewalk on Boscell Road. A parking agreement is required for the shared parking on the adjacent lot. This parking agreement shall also include provisions for joint access.

The drive aisle in the northwestern corner of the site is much wider than the minimum code requirement of twenty-four feet. The applicant intends to use this fifty-foot wide drive aisle to facilitate the loading and unloading requirements of the drywall business co-located on site. The proposed drive aisle and parking provides for the needs of the drywall business, while at the same time complying with the code. The parking needs for the Saddle Rack will not coincide with the needs of the drywall business for a loading zone.

Street Improvements: Boscell Road is an existing minor industrial street with a right-of-way width of sixty-four feet and a pavement width of forty-four feet. The existing street improvements were installed under a Local Improvement District (LID 16). Sidewalks were not included in the LID 16 project, nor were they installed when the current industrial building was developed. At that time, the City had a policy that allowed the waiving of the requirement for public sidewalks.

According to the Development Policy for Exemption of Sidewalk Requirements in Industrial Areas, a development can be granted an exception of the sidewalk requirements only if:

- More than 50% of the industrial properties on the same side of the street and within the ¼ mile are developed without sidewalks or have approved building permits without requirement for sidewalks or covenants for sidewalks; AND
- Abutting properties on common street frontage which are developed and improved for an industrial or commercial use are not improved with sidewalks or have been approved without sidewalks or covenants requiring sidewalks at some future date.

Because the neighboring property to the south, 42101 Boscell Road, has installed sidewalks, the project cannot be granted an exception. Additionally, as a result of the change in use, there will be regular pedestrian or vehicular ingress and egress from the property. Therefore, the lot user is subject to compliance with the Street Rights-of-way and Improvement Ordinance, which requires the lot user to improve Boscell Road to current City standards, which includes installation of sidewalks. A condition of approval has been incorporated into the use permit that requires street improvements for Boscell Road. The new six-inch curb shown at the back of the new sidewalk, on sheet A-1.0, will not be permitted within the public right-of-way.

Grading & Drainage: The project site is relatively flat. The developer is proposing to lease a portion of the adjacent southerly property to used for parking. The leased property and the rear of the existing site, currently a corp yard area, will require improvements to bring these areas into conformance with the code requirements for parking lots. Grading and drainage will be reviewed and approved during Development Organization. The leased area may not be used for parking until improvements are made.

The Project Civil Engineer has designed the parking lot expansion such that runoff will drain overland from the leased property onto the applicant's property. The required parking agreement shall include a provision allowing a drainage release between the lots.

Urban Runoff Clean Water Program: The Federal Clean Water Act of 1972 and Water Quality Act (1987) require localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. The applicant will comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.

Development Impact Fees: This project will be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, capital facilities and traffic impact. These fees shall be calculated at the fee rates in effect at the time of building permit issuance.

Waste Management: This project involves commercial construction and shall be subject to the provisions of the California Integrated Waste Management Act of 1989 (AB939). The Act requires that 50% of the waste generated in the City of Fremont be diverted from landfill sites by the year 2000. Additionally, the project is subject to the City's Source Reduction and Recycling Element (1992), an Integrated Waste Management Ordinance (1995), and a Commercial/Industrial Recycling Plan (1997). These documents require that any new project for which a building permit

application is submitted to include adequate, accessible, and convenient areas for collecting and loading trash and recyclable materials. Any trash/recycling enclosure for the project shall be designed in a manner to be architecturally compatible with nearby structures and with the existing topography and vegetation in accordance with such standards.

Environmental Analysis: This project is categorically exempt from California Environmental Quality Act per Section 15332, In-Fill Development Projects, of CEQA Guidelines.

Response from Agencies and Organizations: None

Enclosures: Exhibit "A" (Site plan, landscape plan, elevations, and floor plan)
Applicant statement

Exhibits: Exhibit "A" (Site plan, landscape plan, elevations, and floor plan)
Exhibit "B" (Findings and Conditions)

Recommended Actions:

1. Hold public hearing.
2. Find PLN2003-00038 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report.
3. Approve PLN2003-00038, as shown on staff annotated Exhibit "A", subject to findings and conditions on Exhibit "B".

EXHIBIT "B"
Saddle Rack
(PLN 2003-00038)

FINDINGS

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated November 7, 2002 incorporated hereby.

1. The proposed use is consistent with the General Plan designation for the site, since the land use, a night club is conditionally permitted on property designated General Industrial on the General Plan. The use is oriented to the regional market and convenient access from freeways is available. The proposed use is compatible with existing industrial uses and would not impede future industrial development.
2. The site is suitable and adequate for the proposed use because the proposed design and operation conforms to ordinance requirements for the zoning district and is subject to conditions of approval that will ensure the use does not have an adverse impact on the site.
3. The proposed use would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or other public facilities or services because all roadway improvements adjacent to the project site have been completed or will be completed with this project. Sufficient parking is provided, points of ingress-egress are properly located, and adequate fire fighting equipment access and facilities are available.
4. The proposed use would not have a substantial adverse economic effect on nearby uses because the building is existing and the use is subject to conditions of approval.
5. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large because the facility is properly regulated with adequate parking, and is designed to limit impacts on surrounding occupants.
6. The design of the project is compatible with existing and proposed development within the district and its surroundings because the proposed use is regulated by conditions of approval to be compatible with adjacent industrial uses.
7. All public improvements or facilities required as part of this approval are directly attributable to the proposed development, and are required for reasons related to public health, safety and welfare.
8. The proposed use will result in regular pedestrian and vehicular ingress and egress from the project property.

CONDITIONS

1. Approval of PLN 2003-00038 for a nightclub shall conform to Exhibit "A" (Site Plan, Conceptual Landscape Plan, Elevations, Floor Plans).
2. Minor modifications to the conditional use permit consistent with Title IV, Chapter 7 of the Fremont Municipal Code may be made subject to review and approval of the Assistant City Manager if such modifications are in keeping with the intent of the original approval.
3. If the Assistant City Manager finds evidence that conditions of approval have not been fulfilled or that the use or uses has or have resulted in a substantial adverse effect on the health, and/or general welfare of users of adjacent or proximate property, or have a substantial adverse impact on public facilities or services, the Assistant City Manager may refer the use permit to the Planning Commission for review. If, upon such review, the Commission finds that any of the results above have occurred, the Commission may modify or revoke the use permit.

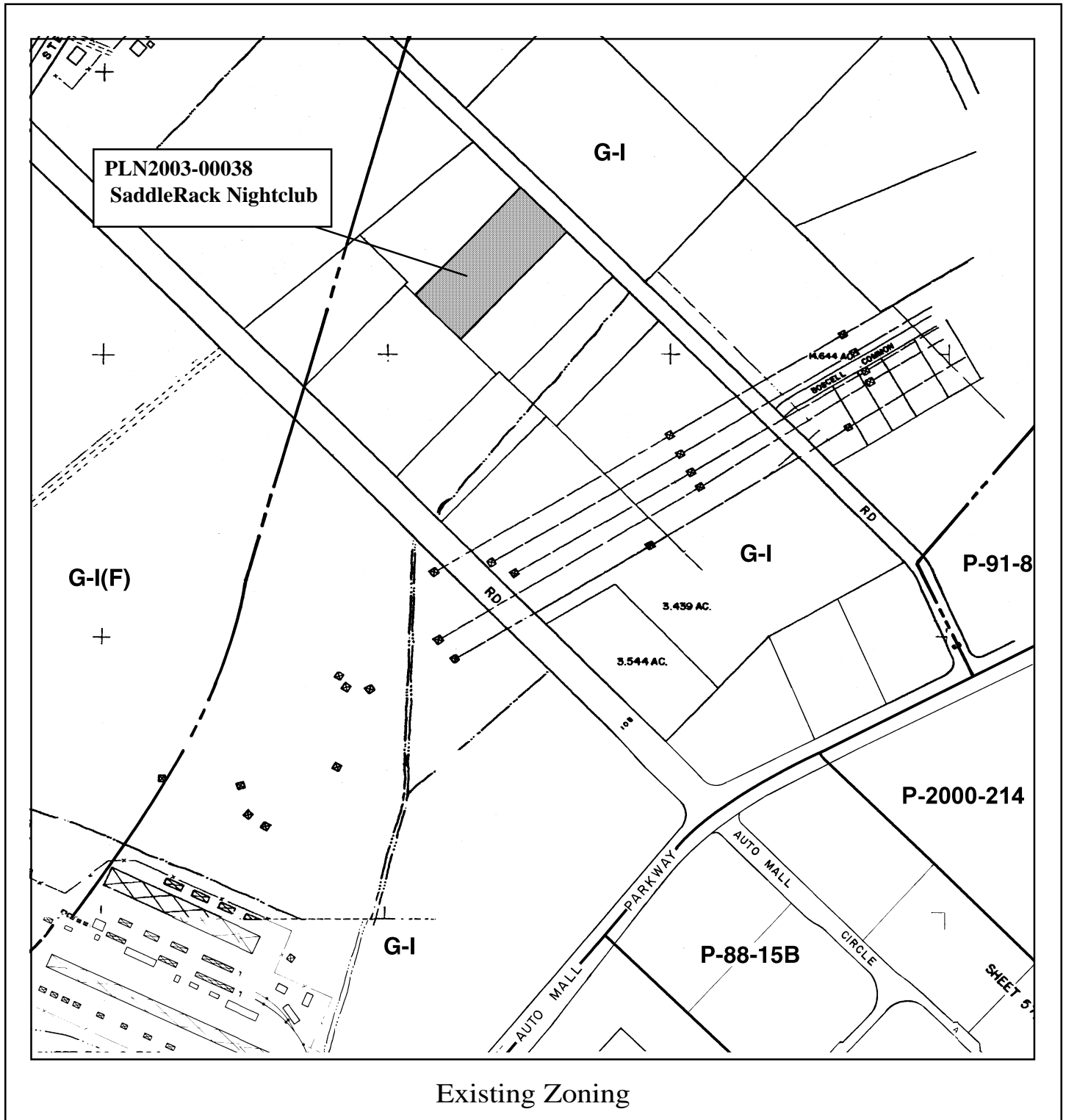
4. The applicant shall be responsible for all personnel costs and incidental expenses required to enforce these special conditions and/or mitigate violations of these conditions. Personnel costs and incidental expenses shall include, but are not limited to Fire and Police personnel, other City personnel and consultant costs, inspection and re-inspection fees, costs incurred in preparation of notices, preparation of specifications and contracts required to abate any nuisance arising from violation of these special conditions, and attorneys fees and costs incurred in enforcing these special conditions. The applicant is responsible for all extraordinary Police services directly related to the operation of the nightclub.
5. Private, licensed security guards shall be provided as follows for the nightclub use: one (1) security guard for each 100 persons or fraction thereof (101 persons = 2 security guards, 201 persons = 3 security guards). The security guards must be licensed through the State of California and must comply with Sections 5-5100 -5-5108 of the Fremont Municipal Code. Security personnel shall be present at least 30 minutes prior to a live music or recorded music dance. Security personnel shall wear identifiable clothing but may not wear a uniform similar to City of Fremont Police Department.
6. The business operator may provide a variety of entertainment including country music concerts, live music, dancing, billiards, dance instruction, and radio broadcasting.
7. The hours of operation are 6:00 pm until 2:00 am Wednesdays through Saturdays. The hours of operation for the nightclub and other businesses on the site shall not coincide.
8. All activities shall take place in the interior of the building and no amplification of music or voice is allowed outside. Sound as measured at the property line may not exceed a noise performance standard of 70 db(A).
9. Alcoholic beverages (all types) may be served subject to State of California licensing requirements.
10. Adult entertainment as found in adult oriented businesses shall not be permitted.
11. The parking lot shall be posted with signs stating " No loitering or consumption of alcoholic beverages" subject to approval of City of Fremont Police Department.
12. Applicant shall submit appropriate plans and documents to City of Fremont Development Organization for review to insure conformance with relevant codes, policies and other requirements of the Fremont Municipal Code.
13. The location of the buildings, driveways, and parking areas shall be provided as shown on Exhibit "A". Landscaping and walkways shall generally be provided in the amounts and locations as shown on Exhibit "A", provided, however, that minor modifications to the location and design of the landscaping and other elements of the above exhibit may be allowed, subject to the review and approval of the Assistant City Manager, if such modifications are in keeping with the layout and architectural design of the buildings, and in keeping with the intent of this approval.
14. The applicant shall provide a total of 370 parking spaces for the nightclub use within 18 months of approval of conditional use permit. Parking may not occur on unimproved portions of the site.
15. A combined landscape/parking layout shall be submitted to the Development Organization. The plan shall include:
 - a. An underground irrigation plan.
 - b. Weed control specification.
 - c. Paving material and textures of walkways.
16. The Owner/Operator is responsible for the maintenance of the site. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface filtration and to minimize the use of fertilizers, herbicides and pesticides that can contribute to urban runoff pollution.
17. Security and safety lighting will be conforming to the City Security Ordinance and regulations so as not to disturb adjacent properties or public rights-of-way. The lighting, both on-site and on street, will be reviewed to be glare-

free to adjacent properties. A lighting plan for the illumination of the buildings, walkways, driveways and parking areas shall be submitted to Development Organization. The type of low intensity, non-glare lighting fixtures, their heights, intensity and direction shall be clearly indicated.

18. The project structure shall have an automatic fire extinguishing system subject to the review and approval of the Fremont Fire Marshall through the Development Organization review process.
19. All roof mounted and other mechanical equipment shall be screened from view from adjacent public right-of ways as well as from adjoining properties.
20. The developer shall install complete street improvements to the centerline of Boscell Road across the project frontage. The required improvements include, but are not limited to, installation of sidewalk, grading, and potential relocation of utilities, such as irrigation lines. Improvements within the public right-of-way shall conform to current City standard details.
21. The applicant shall apply for and obtain an encroachment permit for all improvements within the public right-of-way. The encroachment permit shall be obtained prior to issuance of the building permit.
22. The developer shall install a pedestrian connection to the public sidewalk on Boscell Road from the existing on-site pedestrian pathway system. Staff shall approve the pedestrian connection during Development Organization.
23. The site circulation and parking shall be reviewed for conformance with Title VIII, Chapter 2, Article 20, of the Fremont Municipal Code during Development Organization.
24. The parking agreement shall include provisions for joint access and a drainage release between the project site and the adjacent property to the south, respectively known as Lot 2 of Parcel Map 1559 and Lot 3 of Parcel Map 1559.
25. Applicant shall provide for a functional drainage system subject to approval of the City during Development Organization review.
26. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.
27. Proposed curb elevations for the street system shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grades are to be a minimum of 0.75 feet above the hydraulic grade line.
28. The applicant shall submit a detailed soils report including recommendations regarding structural sections, prepared by a qualified soils engineer registered by the State of California.
29. Grading operations shall be in accordance with recommendations contained in the required soils report and be supervised by an engineer registered in the State of California to do such work.
30. The applicant shall provide for a functional system to control erosion and siltation during and after construction subject to review and approval by the City Engineer and Alameda County Flood Control and Water Conservation District. A separate plan shall be submitted for this purpose.
31. The project plans shall include storm water measures for the operation and maintenance of the project for the review and approval of the City Engineer. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on site that effectively prohibit the entry of pollutants into storm water runoff.
32. The developer is responsible for ensuring that all contractors are aware of all storm water quality measures and that such measures are implemented. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.

33. All paved outdoor storage areas must be designed to reduce and limit the potential for runoff of contact pollutants. Bulk materials stored outdoors may need to be covered as determined by the City Engineer.
34. The developer shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.
35. The property owner is responsible for litter control and for sweeping of all paved surfaces. Sidewalks, parking lots, and other paved areas must be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged to the storm drain.
36. The proposed development shall provide waste and recycling enclosures that shall be made accessible to the City's waste management contractor. The location and accessibility of the trash and recycling enclosures shall be subject to the review and approval by the Development Organization Engineer.
37. All trash and recycling areas are to be enclosed. No other area shall drain to the enclosed area. Drains in any wash area or process area shall not discharge to the storm drain. Drains should connect to the sanitary sewer subject to approval of the Union Sanitary District.
38. All public and private storm drain inlets are to be stenciled "No Dumping – Drains to Bay" using stencils purchased from the Alameda County Urban Runoff Clean Water Program at 951 Turner Court, Hayward, California. Color and type of paint to be as approved by the City Engineer.
39. All on-site storm drains are to be cleaned prior to building occupancy and also be cleaned each year immediately before the beginning of the rainy season (October 15). The City Engineer may require additional cleaning.
40. All washing/steam cleaning must be done at an appropriately equipped facility, which drains to the sanitary sewer. Outdoor washing must be managed in such a way that there is no discharge of soaps, solvents, cleaning agents, or other pollutants to the storm drains. Wash water should discharge to the sanitary sewer, subject to review, approval, and conditions of the Union Sanitary District.
41. Restaurants must be designed with contained areas for cleaning mats, equipment, and containers. This wash area must be covered or designed to prevent runoff from entering or leaving the area. The area shall not discharge to the storm drain. Wash waters should drain to the sanitary sewer or be collected for ultimate disposal to the sanitary sewer. Employees must be instructed and signs posted indicating that all washing activities be conducted in this area. Sanitary sewer connections are subject to the review, approval, and conditions of the Union Sanitary District.
42. Any construction activities related to this project shall be limited to the following hours:
7 a.m. to 7 p.m. Monday through Friday
9 a.m. to 6 p.m. Saturday and Sunday
Failure to comply with the above construction hours will lead to withholding of inspections.

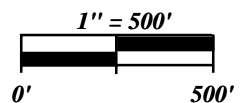
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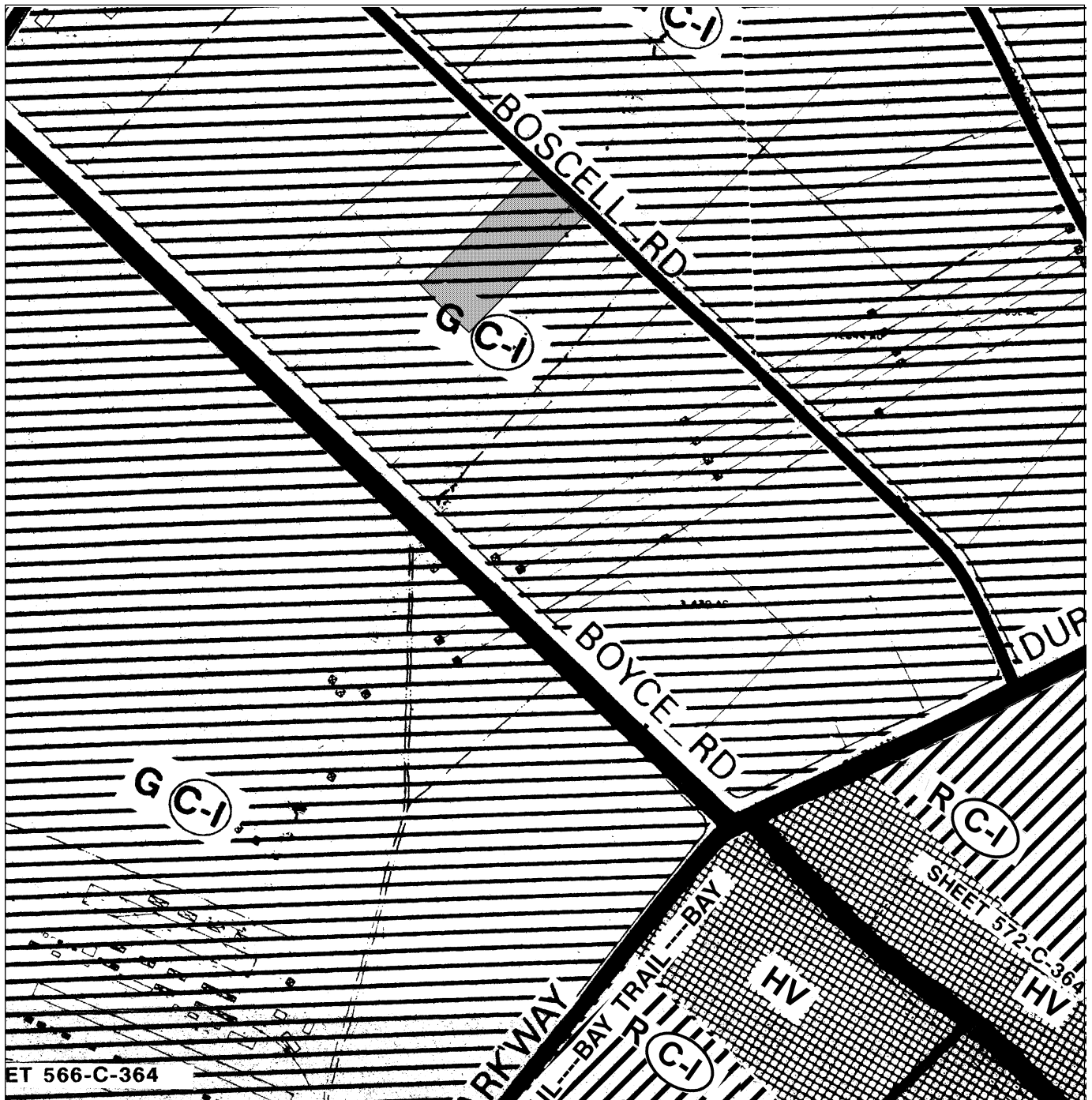
Project Number: PLN2003-00038 (CUP)
Project Name: Saddlerack Nightclub
Project Description: To consider a Conditional Use Permit for a nightclub for developed property located in the industrial Planning Area.



Note: Prior arrangements for access are not required for this site.



INFORMATIONAL



Existing General Plan

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